

ADMINISTRATIVE PANEL DECISION

Villeroy & Boch AG v. Jian Qiu
Case No. D2022-2317

1. The Parties

The Complainant is Villeroy & Boch AG, Germany, represented by Taylor Wessing Partnerschaftsgesellschaft mbB, Germany.

The Respondent is Jian Qiu, China.

2. The Domain Name and Registrar

The disputed domain name <villeroy-boch.xyz> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2022. On June 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 29, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on June 29, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 27, 2022.

The Center appointed Andrew F. Christie as the sole panelist in this matter on August 3, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, named after its founders, Francois Boch and Nicloas Villeroy, began as a manufacturer of ceramics in 1748. It is located in Germany, has around 7,000 employees, operates facilities in 13 countries in Europe and Asia, and sells its products in 125 countries worldwide. The Complainant's group of companies generated a turnover of EUR 945 million in 2021.

The Complainant is the owner of numerous trademark registrations in various jurisdictions around the world, including European Union Trademark Registration No. 001840362 (registered on January 4, 2002) and China Trademark Registration No. 11145584 (registered on November 21, 2013) for the word trademark VILLEROY & BOCH, and German Trademark Registration No. 302012037734 (registered on November 29, 2012) for the stylized VILLEROY & BOCH 1748 trademark.

The Complainant is the owner of various domain names with the second-level domain "villeroy-boch" followed by a generic Top-Level Domain ("gTLD") or a country-code Top-Level Domain ("ccTLD"), including <villeroy-boch.com> and <villeroy-boch.de>.

The disputed domain name was registered on June 1, 2022. The Complainant has provided a screenshot, taken on June 20, 2022, showing that the disputed domain name resolved to a website featuring the Complainant's stylized VILLEROY & BOCH trademark at the top of each webpage, and purportedly offering the Complainant's VILLEROY & BOCH products for sale. At the time of this decision, the disputed domain name resolves to a website that appears to be the website shown in the Complainant's screenshot.

5. Parties' Contentions

A. Complainant

The Complainant made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The disputed domain name reproduces the Complainant's well-known VILLEROY & BOCH trademark, with the only difference being that a hyphen is used to combine the names "Villeroy" and "Boch" instead of an ampersand ("&"). This difference is negligible compared to the distinctive elements "Villeroy" and "Boch". As the sign "&" cannot technically be included in a domain name, it is often replaced by the word "and" or a hyphen, as is the case with the domain names owned and used by the Complainant itself. It is well established that the gTLD has to be disregarded when evaluating the confusing similarity of the disputed domain name to the Complainant's trademark.

The Complainant made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Before the Complainant became aware of the dispute, the Respondent had not been using either the disputed domain name, or a name corresponding to it, in connection with a *bona fide* offering of goods and services. There is no indication that the Respondent has made any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial use. The disputed domain name is being used for the offer of tableware and cutlery, as well as accessories, which are core products of the Complainant. The products shown on the website resolving from the disputed domain name are not only identical as a category to those sold by the Complainant, but the Respondent is using hundreds of (copyrighted) photographs of the Complainant's products to imitate an offer of genuine VILLEROY & BOCH products on the website. The sign VILLEROY & BOCH prominently features in the header of the website resolving from the disputed domain name and in connection with each of the products. The overlap of goods

and the overall design of the website resolving from the disputed domain name clearly shows the Respondent's intent to gain illegitimate commercial benefit by using a domain name which fully incorporates the Complainant's well-known trademark and by prominently using the Complainant's trademarks on the website under the disputed domain name for the goods in question. The aim of the Respondent is to mislead and divert consumers who, upon arriving at the website resolving from the disputed domain name, may mistakenly believe that the website either offers genuine products of the Complainant, or that it is affiliated with or endorsed by the Complainant. There is no evidence that the Respondent has ever been commonly known by the disputed domain name or the trademark VILLEROY & BOCH, or that the Respondent owns any prior rights in the name or trademark VILLEROY & BOCH. The Complainant has not licensed or otherwise permitted the Respondent to use its well-known and distinctive trade name or VILLEROY & BOCH trademarks, or to apply for the registration of the disputed domain name.

The Complainant made the following contentions to establish that the disputed domain name was registered and is being used in bad faith. Due to the reputation and recognition of the VILLEROY & BOCH trademarks due to their longstanding, intensive and widespread use, the Respondent had to be fully aware of the existence of the Complainant and its trademarks when registering the disputed domain name. The Respondent could not have been unaware that the disputed domain name can attract Internet users in a manner that is likely to create confusion for such users, and the Respondent is evidently targeting the Complainant in order to take advantage of its VILLEROY & BOCH brand. The disputed domain name is being used in order to attract people to a website with an offer of products in competition with those of the Complainant. The content of the website resolving from the disputed domain name reinforces the misleading impression caused by it. The only realistic purpose of the registration and use of the disputed domain name was and is to create confusion among Internet users, and to promote the false belief that the disputed domain name belongs to the Complainant, or at least, that the Respondent's business is economically linked with the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Once the gTLD ".xyz" is ignored (which is appropriate in this case), the disputed domain name consists of the Complainant's registered word trademark VILLEROY & BOCH, with the ampersand ("&") replaced by a hyphen. The Complainant's trademark is clearly recognizable within the disputed domain name. The substitution of a hyphen for the ampersand between the words "villeroiy" and "boch" does not avoid a finding of confusing similarity of the disputed domain name with the trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent is not a licensee of the Complainant, is not otherwise affiliated with the Complainant, and has not been authorized by the Complainant to use its VILLEROY & BOCH trademark. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name. The evidence provided by the Complainant shows that the disputed domain name has been used to resolve to a website displaying the VILLEROY & BOCH word trademark and stylized trademark, and purporting to offer VILLEROY & BOCH products for sale. The contents of the Respondent's website are such that many Internet users will form the false belief that the website is operated by, or affiliated with, the Complainant. Given the confusing similarity of the disputed domain name to the Complainant's trademark,

the absence of any relationship between the Respondent and the Complainant, and the failure to avoid the implied false affiliation with the Complainant, the Respondent's use of the disputed domain name is neither a *bona fide* use nor a legitimate noncommercial or fair use.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The disputed domain name was registered several decades after the Complainant first registered its VILLEROY & BOCH word trademark. It is inconceivable that the Respondent registered the disputed domain name ignorant of the existence of the Complainant's trademark, given the renown of the Complainant's trademark, that the disputed domain name consists of the Complainant's trademark with merely the substitution of a hyphen for the ampersand, and that the Respondent used the disputed domain name to resolve to a website that displays the Complainant's name and VILLEROY & BOCH word trademark and stylized trademark, and which purports to offer for sale the Complainant's goods.

Given the Respondent's lack of rights or legitimate interests in the disputed domain name and the confusing similarity of the disputed domain name to the Complainant's trademark, any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainant that does not exist. The Respondent's registration of the disputed domain name in these circumstances is a bad faith registration.

Furthermore, the evidence on the record provided by the Complainant indicates that the Respondent has used the disputed domain name in an attempt to attract, for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainant. The Respondent's use of the disputed domain name in this manner is a bad faith use.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <villeroy-boch.xyz> be transferred to the Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: August 17, 2022